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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HDT BIO CORP.,

11 Plaintiff,

12 v.

13 EMCURE PHARMACEUTICALS,
14 LTD.,

15 Defendant.

CASE NO. C22-0334JLR

ORDER

16 **I. INTRODUCTION**

17 Before the court is Defendant Emcure Pharmaceuticals, Ltd.’s (“Emcure”) motion
18 for attorneys’ fees under RCW 4.28.185(5). (Mot. (Dkt. # 199); Reply (Dkt. # 224).)

19 Plaintiff HDT Bio Corp. (“HDT”) opposes the motion. (Resp. (Dkt. # 221).) The court

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has considered the parties' submissions, the relevant portions of the record, and the governing law. Being fully advised,¹ the court DENIES Emcure's motion.

II. BACKGROUND

HDT filed this action for trade secret misappropriation under the federal Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836, and Washington's Uniform Trade Secrets Act ("UTSA"), RCW 19.108.010 *et seq.* (Am. Compl. (Dkt. # 133) at 82-85.) The parties litigated for 21 months and engaged in over a year of jurisdictional discovery before the court granted Emcure's motion to dismiss for lack of personal jurisdiction and dismissed HDT's claims without prejudice. (*See generally* 12/4/23 Order (Dkt. # 195).) The court concluded that it lacked jurisdiction over Emcure, an Indian pharmaceutical company, because Emcure's ties to the United States were too "random, fortuitous, or attenuated" for the court to exercise personal jurisdiction over it. (*Id.* at 14 (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).)

Emcure then filed the instant motion. (*See generally* Mot.) Emcure brings its motion solely under RCW 4.28.185(5), seeking \$3,246,758.81 in attorneys' fees and costs. (*Id.* at 1, 13.)

III. ANALYSIS

RCW 4.28.185(5) provides as follows:

In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be

¹ Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court concludes that oral argument would not be helpful to its disposition of this motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 taxed and allowed to the defendant as part of the costs of defending the action
2 a reasonable amount to be fixed by the court as attorneys' fees.

3 RCW 4.28.185(5). The statute "authorizes an award of attorney fees when a foreign
4 defendant prevails on jurisdictional grounds." *Scott Fetzer Co. v. Weeks*, 786 P.2d 265,
5 266 (Wash. 1990). One of RCW 4.28.185(5)'s purposes is to deter plaintiffs from
6 "harass[ing] foreign defendants." *Id.* at 272 n.6. "Whether to grant or deny a request for
7 attorneys fees under this provision is wholly within the discretion of the trial court."
8 *Amazon.com, Inc. v. Kalaydjian*, No. C00-1740BJR, 2001 WL 1892190, at *1 (W.D.
9 Wash. Mar. 27, 2001) (citing *Fluke Cap. & Mgmt. Servs. Co. v. Richmond*, 724 P.2d 356,
10 363-64 (Wash. 1986)).

11 Importantly, any award under RCW 4.28.185(5) "is limited to the amount
12 necessary to compensate a foreign defendant for the added costs of litigating in
13 Washington." *W. Consultants, Inc. v. Davis*, 310 P.3d 824, 829 (Wash. Ct. App. 2013)
14 (quoting *Payne v. Saberhagen Holdings, Inc.*, 190 P.3d 102, 113 (Wash. Ct. App. 2008)).
15 In other words, "a prevailing defendant should not recover more than an amount
16 necessary to compensate him for the added litigative burdens resulting from the
17 plaintiff's use of [Washington's] long-arm statute." *Scott Fetzer Co.*, 786 P.2d at 271.
18 Washington courts have determined that "[i]t may be the case that this amounts to zero."
19 *Payne*, 190 P.3d at 113.

20 The court declines to exercise its discretion to award Emcure attorneys' fees and
21 costs for two reasons.

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1 First, “[t]he purpose for which fee-shifting is often utilized,” deterring harassment
 2 of foreign defendants, “is not present in the instant case.” *Lion Fisheries LLC v. AI*
 3 *Transmission & Marine, Inc.*, No. C23-0984JCC, 2023 WL 8188674, at *1 (W.D. Wash.
 4 Nov. 27, 2023) (refusing to award attorneys’ fees under RCW 4.28.185(5) due to an
 5 absence of harassment). (*See generally* Mot. (making no direct allegations of harassment
 6 or bad faith); Reply (same). *See also* Mot. at 6 (arguing that “HDT’s motives for suing
 7 Emcure were unclear”).)

8 Second, Emcure has failed to show that it incurred additional fees as a result of
 9 HDT’s pursuit of a claim under Washington’s UTSA. HDT makes this argument (Resp.
 10 at 3), but Emcure does not respond to it (*see generally* Reply). Instead, Emcure argues
 11 that “state rules provide grounds for a fee award” in this case. (*Id.*) That statement may
 12 be true, but the state rule is clear: Emcure may only recover fees necessary to
 13 compensate it for the “added costs of litigating in Washington.” *Payne*, 190 P.3d at 113.
 14 Emcure seeks over \$3 million in fees but fails to identify a single dollar it spent solely as
 15 a result of HDT’s pursuit of a claim under the Washington UTSA. (*See generally* Mot.)
 16 Nor could it. As Emcure itself recognizes, HDT brought “parallel” claims (Reply at 3);
 17 consequently, the court would have considered the parties’ state and federal claims
 18 together. *See AgroFresh Inc. v. Essentiv LLC*, No. 16-662 (MN), 2020 WL 7024867, at
 19 *3 n.7 (D. Del. Nov. 30, 2020) (“Given the overlap between state-adopted versions of the
 20 Uniform Trade Secrets Act and the DTSA, courts often analyze parallel state and federal
 21 claims of trade secret misappropriation together.”); *Traverse Therapy Servs., PLLC v.*
 22 *Sadler-Bridges Wellness Grp., PLLC*, No. C23-1239MJP, 2024 WL 381180, at *3 (W.D.

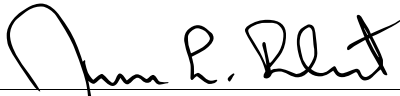
1 Wash. Feb. 1, 2024) (noting that claims under the DTSA and Washington’s UTSA have
2 “substantially similar” elements and overlapping definitions of misappropriation).

3 Emcure concedes that it cannot recover attorneys’ fees under the DTSA. (Mot. at
4 4.) Emcure cannot sidestep the federal law where it fails to show that it incurred any
5 additional fees defending against HDT’s state law claim.² In sum, the court concludes
6 that Emcure is not entitled to attorneys’ fees and costs under RCW 4.28.185(5) because
7 one of the key purposes for which the statute is often utilized is not present in this case
8 and because Emcure incurred no additional fees as a result of HDT’s pursuit of a claim
9 under the Washington UTSA.

10 IV. CONCLUSION

11 For the foregoing reasons, the court DENIES Emcure’s motion for attorneys’ fees
12 (Dkt. # 199).

13 Dated this 12th day of February, 2024

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15 JAMES L. ROBERT
United States District Judge

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21 ² HDT argues that the DTSA preempts RCW 4.28.185(5). (Resp. at 2-3.) Because
22 Emcure is not entitled to recover fees under either statute, however, the court need not consider
whether 18 U.S.C. § 1836(b)(3)(D) conflicts with RCW 4.28.185(5). *See Hubbard v. SoBreck,*
LLC, 554 F.3d 742, 744 (9th Cir. 2009).